

Jason Elliott appeals his fourteen-year sentence for aggravated battery, a Class B felony.¹ He claims the court gave insufficient weight to his guilty plea and the sentence is inappropriate in light of his character and offense. We affirm.

FACTS AND PROCEDURAL HISTORY

In October of 2004, Elliott was dating Natasha Tidwell, who had an eighteen-month-old son, C.T. On October 31, Elliott was babysitting C.T. at Elliott's home. When Elliott walked into his bedroom and saw C.T. vomiting on his bed, Elliott became very angry. He picked up C.T. with such force that he perforated C.T.'s intestine, sending C.T. into hypovolemic shock. C.T. had surgery to repair the perforation, and then spent four days in the intensive care unit and eleven days in the hospital.

On February 28, 2005, the State charged Elliott with battery as a Class B felony,² aggravated battery as a Class B felony, and battery as a Class D felony.³ On April 12, 2006, Elliott pled guilty to aggravated battery. The plea agreement included no sentencing recommendation. Elliott waived his *Blakely* rights for sentencing. The court found two mitigators, that Elliott pled guilty and had no criminal history, and also found two aggravators, C.T.'s age and that Elliott was in a position of trust with C.T. The court sentenced Elliott to fourteen years, with five years suspended to supervised probation.⁴

¹ Ind. Code § 35-42-2-1.5.

² Ind. Code § 35-42-2-1.

³ Ind. Code § 35-42-2-1.

⁴ When Elliott committed his crime, the presumptive sentence for a Class B felony was ten years. Ind. Code § 35-50-2-5 (2004). The court could add ten years for aggravators or subtract four years for mitigators. *Id.*

DISCUSSION AND DECISION

1. Weight Assigned to Plea

Elliott first claims the court abused its discretion by giving inadequate weight to his guilty plea. Elliott asserts the court should have given sufficient weight to his plea to find the two mitigators balanced the two aggravators, and accordingly imposed the presumptive sentence.

We review a trial court's sentencing decisions for an abuse of discretion. *Bocko v. State*, 769 N.E.2d 658, 667 (Ind. Ct. App. 2002), *reh'g denied, trans. denied* 783 N.E.2d 702 (Ind. 2002). We give great deference to the trial court's assessment of the proper weight of mitigating and aggravating circumstances and the appropriateness of the sentence as a whole, and we set aside a sentence only upon a showing of a manifest abuse of discretion. *Id.* A trial court is not obliged to accept as mitigating each of the circumstances proffered by the defendant. *Ousley v. State*, 807 N.E.2d 758, 761 (Ind. Ct. App. 2004).

Elliott specifically challenges the court's assignment of "very little weight" to his guilty plea. (Tr. at 86.) He believes "the State unquestionably reaped an enormous benefit from [his] plea," (Appellant's Br. at 7), because he saved the State the expense of a trial and C.T.'s mother the emotional turmoil of trial.

A defendant who willingly enters a plea of guilty deserves to have a benefit extended to him in return, because a guilty plea demonstrates a defendant's acceptance of responsibility for the crime and extends a benefit to the State and to the victim or the victim's family by avoiding a full-blown trial. *Francis v. State*, 817 N.E.2d 235, 237-38

(Ind. 2004). However, “[a] guilty plea is not automatically a significant mitigating factor.” *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). A court does not have to give significant weight to a plea “where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one.” *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied* 855 N.E.2d 995 (Ind. 2006).

The court explained it assigned little weight to this mitigator because Elliott displayed neither remorse nor acceptance of responsibility:

But what I turn around and hear is quibbling. Quibbling over whether I’m really guilty or not. I thought there [were] a couple, at least two times this morning that we are going to have to forget about all this and go ahead and have a trial. So with all the quibbling uh, over the details uh, I don’t see really if there is any remorse. And I think there is some, it’s minimal. Uh, as far as acceptance of responsibility, it’s minimal as well.

(Tr. at 86.) In addition, C.T.’s mother experienced much of the turmoil of trial because she testified at sentencing and was subjected to “rigorous cross-examination.” (Appellee’s Br. at 4.) We also note nearly eighteen months passed between Elliott’s offense and his plea, during which time the State presumably incurred some expense preparing for trial. We cannot say the court abused its discretion in declining to assign additional weight to this mitigator.

2. Appropriateness of Sentence

We will not revise a sentence authorized by statute unless it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). We exercise great restraint in reviewing and revising sentences and recognize the

special expertise of the trial bench in making sentencing decisions. *Pinkston v. State*, 836 N.E.2d 453, 458 (Ind. Ct. App. 2005), *trans. denied*.

Elliott became angry and squeezed the stomach of an eighteen-month old with sufficient force to perforate the child's intestine simply because the child was throwing up on his bed. He admitted the force he used was "far in excess of what would normally be used on a child when you pick them up." (Tr. at 20.) The child was the son of Elliott's girlfriend, and Elliott was baby-sitting at the time. The child went into hypovolemic shock and was in critical condition, requiring surgery and a stay in the intensive care unit.

At the time, Elliott was twenty-nine years old. His mother and sister testified he had learning disabilities, but the record indicates Elliott graduated from high school and was taking college courses. Moreover, he testified he did not "[s]uffer from any mental or emotional disability." (*Id.* at 5.) Accordingly, the record does not demonstrate Elliott was without the capacity to understand the negative impact of squeezing the stomach of a small child with excessive force.

Nothing about Elliott's crime or character suggests his fourteen year sentence is inappropriate.

Affirmed.

BAILEY, J., and SHARPNACK, J., concur.